

103D CONGRESS
1ST SESSION

H. R. 3620

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. UPTON introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Public Works and Transportation, and Ways and Means

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “ ”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—INNOCENT LANDOWNER

Sec. 101. Amendment to Superfund pertaining to innocent landowner defense.

Sec. 102. Effective date.

TITLE II—VOLUNTARY CLEANUPS

- Sec. 201. Definitions.
- Sec. 202. Applicability; integration with other Acts.
- Sec. 203. Authorized State voluntary response programs.
- Sec. 204. Procedures for undertaking voluntary responses.
- Sec. 205. Response requirements.
- Sec. 206. Relationship with other laws.
- Sec. 207. Requirement to perform additional response action.
- Sec. 208. Enforcement and effect of compliance with this title.

TITLE III—ECONOMIC INCENTIVES

- Sec. 301. Environmental remediation tax credit.
- Sec. 302. Deduction of environmental cleanup expenses.

TITLE IV—LENDER LIABILITY

- Sec. 401. Amendments to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
- Sec. 402. Scope of application.

TITLE V—MISCELLANEOUS

- Sec. 501. Contractor liability
- Sec. 502. Conduit acquisitions [To be provided].

1 **TITLE I—INNOCENT**
 2 **LANDOWNER**
 3 **SEC. 101. AMENDMENT TO SUPERFUND PERTAINING TO IN-**
 4 **NOCENT LANDOWNER DEFENSE.**

5 Section 101(35) of the Comprehensive Environmental
 6 Response, Compensation, and Liability Act of 1980 (42
 7 U.S.C. 9601 et seq.) is amended by redesignating sub-
 8 paragraphs (C) and (D) as subparagraphs (D) and (E),
 9 respectively, and inserting after subparagraph (B) the fol-
 10 lowing:

11 “(C)(i) A defendant who has acquired real property
 12 shall have established a rebuttable presumption that he
 13 has made all appropriate inquiry within the meaning of
 14 subparagraph (B) if he establishes that, within 180 days

1 prior to the time of acquisition, he conducted an environ-
2 mental site assessment of the real property which meets
3 the requirements of this subparagraph.

4 “(ii) For purposes of this subparagraph, the term
5 ‘environmental site assessment’ means an assessment of
6 the real property and surrounding areas to obtain com-
7 monly known or reasonably ascertainable information
8 about the property and to assess the obviousness of the
9 presence or likely presence of contamination at the real
10 property, and which consists of each of the following
11 elements:

12 “(I) Interview of owners, operators, and occu-
13 pants of the property to determine information re-
14 garding the potential for contamination there.

15 “(ii) review of standard historical sources as
16 necessary to determine previous uses and occupan-
17 cies of the property since the property was first de-
18 veloped. For purposes of this subclause, the term
19 “standard historical sources” means any of the fol-
20 lowing, providing they are reasonable ascertainable:
21 recorded chain of title documents regarding the real
22 property, including all deeds, easements, leases, re-
23 strictions, and covenants; aerial photographs; fire in-
24 surance maps; property tax files; USGS 7.5 minute
25 topographic maps; local street directories; building

1 department records; zoning/land use records; and
2 any other sources that are credible to a reasonable
3 person and that identify past uses and occupancies
4 of the property.

5 “(III) Determination of the existence of re-
6 corded environmental cleanup liens against the real
7 property which have arisen pursuant to Federal,
8 State, or local statutes.

9 “(IV) Review of reasonably ascertainable Fed-
10 eral, State, and local government records of sites or
11 facilities that are likely to cause or contribute to
12 contamination at the real property, including, as ap-
13 propriate, investigation reports for such sites or fa-
14 cilities; records of activities likely to cause or con-
15 tribute to contamination at the real property, includ-
16 ing landfill and other disposal location records, un-
17 derground storage tank records, hazardous waste
18 handler and generator records and spill reporting
19 records; and such other reasonable ascertainable
20 Federal, State, and local government environmental
21 records which reflect incidents or activities which are
22 likely to cause or contribute to contamination at the
23 real property.

24 “(V) A visual site inspection of the real prop-
25 erty and all facilities and improvements on the real

1 property, and a visual inspection of immediately ad-
2 jacent properties, including an investigation of any
3 hazardous substance use, storage, treatment, and
4 disposal practices on the property.

5 A record is considered to be ‘reasonably ascertainable’ for
6 purposes of this clause if a copy or reasonable facsimile
7 of the record, or access to it, is obtainable from the gov-
8 ernment agency by request (within reasonable time and
9 cost constraints) and the record is practically reviewable.

10 “(iii) No presumption shall arise under clause (i) un-
11 less the defendant has maintained a compilation of the in-
12 formation reviewed in the course of the environmental site
13 assessment.

14 “(iv) Notwithstanding any other provision of this
15 paragraph, if the environmental site assessment discloses
16 the presence of contamination at the real property to be
17 acquired, no presumption shall arise under clause (i) with
18 respect to such contamination unless the defendant has
19 taken reasonable steps, in accordance with commonly
20 available technology, existing law, and generally acceptable
21 engineering practices, as may be necessary to confirm the
22 absence of such contamination.

23 “(v) For the purposes of this paragraph, the term
24 ‘contamination’ means an existing release, a past release,
25 or the material threat of a release of a hazardous sub-

1 stance, other than de minimis conditions that generally do
2 not present a material risk of harm to public health or
3 welfare or the environment.

4 **SEC. 102. EFFECTIVE DATE.**

5 Subparagraph (C) of section 101(35) of the Com-
6 prehensive Environmental Response, Compensation, and
7 Liability Act of 1980, as added by section 101, shall take
8 effect on the date of the enactment of this Act.

9 **TITLE II—VOLUNTARY**
10 **CLEANUPS**

11 **SEC. 201. DEFINITIONS.**

12 For purposes of this title, the terms used herein shall
13 have the same meaning as set forth in the Comprehensive
14 Environmental Response, Compensation and Liability Act
15 (42 U.S.C. 9601 et seq). Also for purposes of this Act,
16 the following definitions shall apply:

17 (1) The term “CAA” means the Clean Air Act
18 (42 U.S.C. 1401 et seq).

19 (2) The term “CERCLA” means the Com-
20 prehensive Environmental Response, Compensation
21 and Liability Act (42 U.S.C. 9601 et seq).

22 (3) The term “commercial property” means any
23 place where people work that is accessible to the
24 public. Such property includes, but is not limited to,

1 institutional properties, stores, office buildings, and
2 indoor transportation centers.

3 (4) The term “CWA” means the Clean Water
4 Act (33 U.S.C. 1251 et seq).

5 (5) The term “engineering controls” means any
6 mechanism to contain or stabilize contamination or
7 ensure the effectiveness of a response action. Engi-
8 neering controls include caps, covers, dikes, trenches,
9 and leachate collection systems.

10 (6) The term “hazardous constituent” means
11 any hazardous waste constituent identified by the
12 Administrator under subtitle C of the Resource Con-
13 servation and Recovery Act (42 U.S.C. 6901 et seq).

14 (7) The term “industrial property” means any
15 property that does not meet the criteria established
16 under the definition of “residential property” or
17 “commercial property”.

18 (8) The term “institutional controls” means
19 any mechanism used to limit human activity or ex-
20 posure at or near a contaminated site, including re-
21 strictions on the use of the site or access to the site.
22 Institutional controls include fences or gates, deed
23 restrictions, prohibitions on well use, and warning
24 signs.

1 (9) The term “OPA” means the Oil Pollution
2 Act of 1990 (33 U.S.C. 2701 et seq).

3 (10) The term “RCRA” means the Solid Waste
4 Disposal Act, as amended by the Resource Conserva-
5 tion and Recovery Act (42 U.S.C. 6901 et seq).

6 (11) The term “residential property” means
7 any place where people live or reside. Such property
8 includes housing and the property on which housing
9 is located, playgrounds, schools, parks, and other
10 similar areas within a residential community.

11 (12) The term “SDWA” means the Safe Drink-
12 ing Water Act (42 U.S.C. 300(f) et seq).

13 (13) The term “TSCA” means the Toxic Sub-
14 stances Control Act (15 U.S.C. 2601 et seq).

15 **SEC. 202. APPLICABILITY; INTEGRATION WITH OTHER**
16 **ACTS.**

17 (a) PURPOSE.—This title provides an alternative
18 method for remediation of contaminated sites and, when
19 used at eligible sites, will satisfy the remediation require-
20 ments under the statutes specified in section 109(b) of
21 this Act. The title establishes requirements applicable to,
22 and criteria for determining the adequacy of, voluntary re-
23 sponses to releases or threatened releases of hazardous
24 substances or hazardous constituents into the environ-
25 ment.

1 (b) APPLICABILITY.—Except as provided in sub-
2 section (c), this title applies to any facility where there
3 has been a release or threat of release of a hazardous sub-
4 stance or hazardous constituent into the environment in-
5 cluding:

6 (1) any facility subject to response under
7 CERCLA, including but not limited to facilities cur-
8 rently included on or proposed for inclusion on the
9 National Priorities List;

10 (2) any facility subject to corrective action
11 under RCRA sections 3004(u) or 3008(h);

12 (3) any facility containing polychlorinated
13 biphenyls subject to response under TSCA section
14 6(e); and

15 (4) any facility included on a State list of con-
16 taminated sites warranting response.

17 (c) EXCLUSIONS.—This title does not apply to the
18 following—

19 (1) any portion of a facility with respect to
20 which a Record of Decision has been issued by the
21 President under CERCLA section 104;

22 (2) any portion of a facility with respect to
23 which an administrative or judicial order or consent
24 decree requiring remedial action has been issued

1 under CERCLA sections 106 or 122, RCRA section
2 7003, CWA section 504, or SDWA section 1431;

3 (3) any land disposal unit with respect to which
4 a closure notification under subtitle C of RCRA has
5 been submitted and closure requirements have been
6 specified in a closure plan or permit; or

7 (4) any portion of a facility with respect to
8 which a corrective action permit or order has been
9 issued, modified, or amended to require implementa-
10 tion of corrective measures.

11 **SEC. 203. AUTHORIZED STATE VOLUNTARY RESPONSE PRO-**
12 **GRAMS.**

13 (a) AGREEMENTS WITH STATES.—After enactment
14 of this Act, any State may apply to the Administrator to
15 administer the voluntary response program authorized
16 under this title.

17 (b) APPROVAL OF STATE PROGRAMS.—If the Admin-
18 istrator determines, after public notice and comment, that
19 a State program submitted pursuant to subsection (a) is
20 consistent with the provisions of this title and that the
21 State has the capability to administer such program in
22 accordance with the standards and procedures established
23 pursuant to this title, the Administrator shall enter into
24 an agreement with the State to administer such program.
25 The Administrator shall approve or disapprove a State ap-

1 plication within sixty days of the close of the public com-
2 ment period. The Administrator's determination on a
3 State application shall be published in the Federal Reg-
4 ister and, in the case of approval, shall identify the State
5 agency that will administer the program.

6 (c) EFFECT OF APPROVAL.—(1) Subject to para-
7 graph (2), a State with a program approved pursuant to
8 subsection (b) shall have sole jurisdiction and responsibil-
9 ity for implementing and enforcing the requirements of
10 this Act.

11 (2) Whenever the Administrator determines after
12 public hearing that a State is not administering and en-
13 forcing a program approved under subsection (b) in ac-
14 cordance with the requirements of this Act, the Adminis-
15 trator shall notify the State of such a determination. If
16 appropriate corrective action is not taken by the State
17 within a reasonable time, not to exceed ninety days, the
18 Administrator shall withdraw approval of such program
19 and provide notice of such withdrawal in the Federal Reg-
20 ister. The Administrator shall not withdraw approval of
21 any such program without having first notified the State,
22 and made public, in writing, the reasons for such with-
23 drawal.

24 (d) EFFECT OF DISAPPROVAL OR WITHDRAWAL.—
25 In the case of disapproval of a State application pursuant

1 to subsection (b) or withdrawal of State approval pursuant
2 to subsection (c), the Administrator shall be responsible
3 for administering a Federal program pursuant to this title
4 and notice of such shall be published in the Federal
5 Register.

6 (e) STATE APPROVAL OF VOLUNTARY RESPONSE AC-
7 TION.—Any approval of a voluntary response action by a
8 State authorized under this section shall have the same
9 force and effect as approval by the Administrator under
10 this title.

11 **SEC. 204. PROCEDURES FOR UNDERTAKING VOLUNTARY**
12 **RESPONSES.**

13 (a) NOTICE OF INTENTION TO CONDUCT A VOL-
14 UNTARY RESPONSE.—Beginning six months after the date
15 of enactment of this Act, any person may submit a notifi-
16 cation of intent to conduct a voluntary response pursuant
17 to this title. Any person who intends to conduct a vol-
18 untary response pursuant to this title shall give written
19 notice to the Administrator and the State in which the
20 voluntary response is to occur. Such notice shall set forth
21 information sufficient for the Administrator (or the State,
22 if authorized) to determine that the facility is eligible for
23 the voluntary response program. If the person giving no-
24 tice is not the owner or operator of the facility, the notice
25 shall include a representation that the owner or operator

1 has consented to the conduct of the voluntary response
2 action by the person giving notice.

3 (b) OVERSIGHT COSTS.—(1) As a condition of eligi-
4 bility for the voluntary response program, the person giv-
5 ing notice must agree in advance to pay the reasonable
6 direct costs incurred and documented by the Adminis-
7 trator (or the State, if authorized) in reviewing the re-
8 sponse action plan in subsection (d) and overseeing the
9 response.

10 (2) A person conducting a voluntary response pursu-
11 ant to this title shall make a one-time, non-refundable pay-
12 ment of \$5,000 at the time the person submits a response
13 action plan under subsection (d), which payment shall con-
14 stitute a set-off against future oversight costs incurred by
15 the Administrator (or the State, if authorized).

16 (3) The Administrator (or the State, if authorized)
17 shall establish procedures for arbitration of disputes con-
18 cerning reimbursement of reasonable direct costs incurred
19 under this title.

20 (c) FACILITY INVESTIGATION.—Any person who in-
21 tends to perform a voluntary response under this title shall
22 first conduct a facility investigation which assesses those
23 factors listed below that are necessary to determine an ap-
24 propriate response to the particular release—

1 (1) physical characteristics of the facility, in-
2 cluding important surface features, soils, geology,
3 hydrogeology, meteorology, and ecology;

4 (2) characteristics or classifications of air, sur-
5 face water, and groundwater at the facility;

6 (3) the general characteristics of the hazardous
7 substances and hazardous constituents at the facil-
8 ity, including quantity, state, concentration, toxicity,
9 propensity to bioaccumulate, persistence, and mobil-
10 ity;

11 (4) the extent to which the source of the release
12 of hazardous substances and hazardous constituents
13 can be adequately identified and characterized;

14 (5) actual and potential exposure pathways
15 through environmental media;

16 (6) actual and potential exposure pathways to
17 human receptors;

18 (7) the current use(s) of the property and adja-
19 cent properties; and

20 (8) other factors that pertain to the character-
21 ization of the facility for the purpose of a voluntary
22 response or selection of a response action alter-
23 native.

24 (d) RESPONSE ACTION PLAN.—

1 (1) REQUIREMENT FOR A RESPONSE ACTION
2 PLAN.—A voluntary response to be carried out pur-
3 suant to this Act shall be set forth in a “response
4 action plan” submitted with the facility investigation
5 report to the Administrator (or the State, if author-
6 ized). The response action plan shall describe—

7 (A) the response action to be taken;

8 (B) the response standards to be achieved
9 in accordance with section 205;

10 (C) the level or standard of control for
11 hazardous substances or hazardous constituents
12 that will be discharged or emitted into the envi-
13 ronment during the response action consistent
14 with the standards under section 205; and

15 (D) a schedule for completion of the re-
16 sponse action.

17 (2) PUBLIC PARTICIPATION.—Within 15 days
18 of receipt of the response action plan, the Adminis-
19 trator (or the State, if authorized) shall publish in
20 the Federal Register (or State equivalent) notice of
21 receipt of the plan and a brief summary of the plan,
22 information regarding the availability of the plan to
23 the public, and notice of a 45-day comment period.

24 (3) APPROVAL OF RESPONSE ACTION.—A re-
25 sponse action plan or plan modification shall be

1 deemed approved unless the Administrator (or the
2 State, if authorized) determines, within 30 days of
3 the close of the public comment period specified in
4 subsection (2), that

5 (A) based on site-specific factors, the re-
6 sponse action plan or plan modification does
7 not comply with the response standards under
8 section 205; or

9 (B) the response action plan or plan modi-
10 fication as submitted, or the facility investiga-
11 tion on which it is based, is otherwise not in ac-
12 cordance with the requirements of this title.

13 Such determination shall be in writing and shall
14 state with specificity the basis for the disapproval.
15 The Administrator (or the State, if authorized) shall
16 publish in the Federal Register (or State equivalent)
17 notice of its decision of approval or disapproval of a
18 response action plan, along with the name of the
19 person from which additional information may be
20 obtained concerning the agency's decision.

21 (4) WAIVER.—

22 (A) A person conducting a voluntary re-
23 sponse under this title may submit with the re-
24 sponse action plan, or at any time thereafter, a
25 petition to the Administrator (or the State, if

1 authorized) for a waiver of the response re-
2 quirements in section 205.

3 (B) Within 15 days of receipt of the waiver
4 petition, the Administrator (or the State, if au-
5 thorized) shall publish in the Federal Register
6 (or State equivalent) notice of the waiver peti-
7 tion and notice of a thirty-day comment period.

8 (C) The Administrator (or the State, if au-
9 thorized) shall, within thirty days of the close of
10 the comment period described in subsection
11 (B), grant a waiver of the applicable standards
12 at a particular facility in response to such peti-
13 tion where:

14 (i) compliance with the applicable
15 standards will result in greater risk to
16 human health and the environment than
17 alternative options;

18 (ii) compliance with the applicable
19 standards is impracticable from an engi-
20 neering perspective;

21 (iii) the response action will attain a
22 level of protection that is equivalent to that
23 provided by the applicable standards; or

24 (iv) contaminants will not travel the
25 expected exposure pathway(s) as a result

1 of site-specific conditions, institutional con-
2 trols, or engineering controls.

3 (e) REPORTING AND RECORDKEEPING REQUIRE-
4 MENTS.—

5 (1) REPORTING.—A person conducting a vol-
6 untary response pursuant to this title shall submit
7 an annual progress report to the Administrator (or
8 the State, if authorized) which includes—

9 (A) a description of the actions which have
10 been taken in accordance with the approved re-
11 sponse action plan; and

12 (B) the results of sampling and analysis
13 required by the response action plan generated
14 during the prior year.

15 (2) RECORDKEEPING.—A person conducting a
16 voluntary response under this title shall document
17 the actions taken and maintain, for five years after
18 the person submits a certification under subsection
19 (f) to the appropriate agency, the following
20 records—

21 (A) the notification to the Administrator
22 and the State required by subsection (a);

23 (B) the facility investigation report;

24 (C) the response action plan;

1 (D) all data required to be generated by
2 the response action plan, including post-re-
3 sponse verification data; and

4 (E) the certification submitted pursuant to
5 subsection (f) demonstrating that the voluntary
6 response is complete and in compliance with the
7 response action plan.

8 (f) CERTIFICATION.—(1) Upon completion of the vol-
9 untary response, a person conducting a response under
10 this title shall submit to the Administrator (or the State,
11 if authorized), a certification that the voluntary response
12 has been completed in accordance with the approved re-
13 sponse action plan. The certification shall include the in-
14 formation required under subsection (e)(1) and all post-
15 response verification data required by the response action
16 plan. For response action plans that require operation and
17 maintenance or monitoring for a period exceeding two
18 years, the certification may be submitted at the completion
19 of any other work required by the approved response ac-
20 tion plan. The certification shall be signed by the duly au-
21 thorized representative of the person conducting the vol-
22 untary response and an independent registered profes-
23 sional engineer.

24 (2) A voluntary response action under this title shall
25 be deemed approved unless, within ninety days of submis-

1 sion of the certification provided in paragraph (1) of this
2 subsection, the Administrator (or the State, if authorized)
3 exercises its authority under section 207(a).

4 **SEC. 205. RESPONSE REQUIREMENTS.**

5 (a) COMPLIANCE WITH RESPONSE STANDARDS.—
6 Voluntary responses conducted pursuant to this Act shall
7 attain response standards derived on a site-specific basis
8 in accordance with this section. In determining the appro-
9 priate means of achieving such standards, persons under-
10 taking voluntary response and the approving governmental
11 agency shall take into account the practicability of the
12 chosen response from an engineering perspective, the ex-
13 istence of background levels of contaminants on the prop-
14 erty, and the cost of the response in relation to the degree
15 of risk reduction achieved by such response. Response ac-
16 tions under this Act may attain the response standards
17 of this section through the use of reliable engineering con-
18 trols (such as geohydrologic measures, grout curtains,
19 etc.) and/or institutional controls where the party under-
20 taking response can demonstrate that (i) other response
21 measures are impracticable for economic, technological, or
22 implementation reasons, or (ii) engineering and/or institu-
23 tional controls are necessary to control the source of con-
24 tamination or prevent exposure as part of an overall reme-
25 dial action program.

1 (b) PERFORMANCE OF A SITE-SPECIFIC RISK AS-
2 SESSMENT.—A person seeking to conduct a voluntary
3 cleanup must submit a site-specific risk assessment along
4 with the response action plan. The risk assessment shall
5 be performed in accordance with currently acceptable sci-
6 entific principles, and shall take into account, among other
7 factors, variability in exposed individuals, variability in
8 contaminant levels, actual or planned land, surface water,
9 and groundwater use, reasonable exposure points, and the
10 most probable, as opposed to worst case, exposure
11 scenarios.

12 (c) ESTABLISHMENT OF SITE-SPECIFIC RESPONSE
13 STANDARDS.—A response action plan shall set forth re-
14 sponse standards to be achieved by the response action,
15 along with supporting documentation and explanation,
16 such that—

17 (1) for carcinogenic hazardous substances or
18 hazardous constituents, the concentration level rep-
19 resents an excess upper bound lifetime cancer risk to
20 an individual of between 1×10^{-4} and 1×10^{-6} ; or

21 (2) for noncarcinogenic hazardous substances
22 or hazardous constituents, the concentration level
23 will not result in adverse effects on human health
24 over a lifetime or part of a lifetime, with an ade-
25 quate margin of safety.

1 (d) ALTERNATIVE RESPONSE STANDARDS.—A per-
2 son submitting a response plan may, in lieu of performing
3 a site-specific risk assessment and deriving response
4 standards therefrom, instead rely on promulgated Federal
5 and State response standards that are appropriate for
6 hazardous substances or constituents of concern and the
7 environmental conditions which obtain at the site, pro-
8 vided such standards meet the risk reduction goals set
9 forth in section 106(c).

10 (e) SCIENCE ADVISORY BOARD STUDY.—

11 (1) PURPOSE OF THE STUDY.—Within 12
12 months of the date of enactment of this Act, the En-
13 vironmental Protection Agency Science Advisory
14 Board shall complete a report on the validity of the
15 risk assessment methodologies used by the Environ-
16 mental Protection Agency with any recommenda-
17 tions it believes are appropriate to improve the accu-
18 racy and reliability of those methodologies.

19 (2) ELEMENTS TO BE STUDIED.—In conducting
20 such review, the National Academy of Sciences shall
21 consider relevant factors including the following:

22 (A) the degree to which exposure assump-
23 tions reflect actual exposure;

1 (B) the appropriateness of assumptions
2 concerning human behavior, including land and
3 water use;

4 (C) other techniques used for estimating
5 the exposure of human receptors to contami-
6 nants; and

7 (D) other techniques used for assessing the
8 potential adverse human health effects associ-
9 ated with exposure.

10 (3) PUBLIC COMMENT ON THE REPORT.—The
11 Administrator shall publish the report upon receipt
12 from the Science Advisory Board and solicit com-
13 ment thereon within 30 days of publication. Within
14 60 days of the close of the public comment period,
15 the Science Advisory Board shall, if appropriate,
16 modify the report to incorporate public comment and
17 issue a final version of the report.

18 (4) CONTENT AND USE OF THE REPORT.—The
19 Science Advisory Board report shall describe in de-
20 tail current risk assessment practices and shall set
21 forth specific recommendations for revising such
22 practices. Within 3 months following issuance of the
23 final report, the Administrator shall revise the Envi-
24 ronmental Protection Agency's risk assessment guid-

1 ance and policy documents to reflect the rec-
2 ommendations contained in the report.

3 **SEC. 206. RELATIONSHIP WITH OTHER LAWS.**

4 (a) PERMITS NOT REQUIRED.—No Federal, State, or
5 local permit shall be required for any voluntary response
6 conducted onsite in compliance with this title.

7 (b) NCP.—Voluntary responses conducted in accord-
8 ance with the terms and conditions of this title shall be
9 deemed consistent with the National Contingency Plan for
10 purposes of private cost recovery claims under CERCLA
11 or OPA.

12 (c) EFFECT OF RESPONSE.—Performance of a vol-
13 untary response pursuant to this title shall not constitute
14 an admission of liability under any Federal, State, or local
15 laws or regulations or in any private action nor shall such
16 performance be admissible as evidence in any citizen's suit
17 or private action brought under any of the statutes speci-
18 fied in section 208(b) of this title.

19 **SEC. 207. REQUIREMENT TO PERFORM ADDITIONAL RE-**
20 **SPONSE ACTION.**

21 Upon receiving certification under section 204(f) that
22 a voluntary response action under this title is complete,
23 the Administrator (or a State, if authorized) may require
24 additional response actions only under the following cir-
25 cumstances:

1 (1) The Administrator (or the State, if author-
2 ized) determines in writing, based on review of
3 records or sampling data following completion of the
4 response action, that the voluntary response has not
5 been substantially completed; or

6 (2) The Administrator (or the State, if author-
7 ized) learns of new significant and reliable informa-
8 tion not available at the time of response action plan
9 approval, other than revised regulations, guidance,
10 or test methods, that would have justified the appli-
11 cation of substantially different conditions at the
12 time of approval and at the time of discovery of such
13 new information.

14 **SEC. 208. ENFORCEMENT AND EFFECT OF COMPLIANCE**
15 **WITH THIS TITLE.**

16 (a) **ENFORCEMENT.**—Whenever the Administrator
17 (or the State, if authorized) determines that any person
18 has failed to comply with the terms or conditions of an
19 approved response action plan, the Administrator (or the
20 State, if authorized) may issue an order requiring compli-
21 ance with such term or condition. If the person fails to
22 comply with the order, a civil penalty of not more than
23 \$10,000 per violation may be assessed by the Adminis-
24 trator (or the State, if authorized) for the violation of the
25 term or condition of an approved response action plan

1 identified in the order. In determining the amount of any
2 penalty assessed pursuant to this subsection, the Adminis-
3 trator (or the State, if authorized) shall take into account
4 the nature, circumstances, extent and gravity of the viola-
5 tion, any good-faith efforts to comply with the terms and
6 conditions of the response action plan, the degree of cul-
7 pability or the economic benefit (if any) resulting from the
8 violation, any prior history of such violation, and such
9 other matters as justice may require. No penalty may be
10 assessed under this subsection unless the person accused
11 of the violation is given notice and opportunity for a hear-
12 ing with respect to the violation.

13 (b) EFFECT OF COMPLIANCE.—Voluntary responses
14 undertaken pursuant to an approved response action plan
15 and the terms and conditions of this title shall be deemed
16 in compliance with the requirements of the CAA, CWA,
17 SDWA, OPA, CERCLA, RCRA, TSCA, and equivalent
18 State and local laws and shall not be subject to any sub-
19 stantive or procedural requirements of such laws, and no
20 further response action shall be required under such laws
21 for any matter addressed in the voluntary response plan
22 for a particular facility.

TITLE III—ECONOMIC INCENTIVES

SEC. 301. ENVIRONMENTAL REMEDIATION TAX CREDIT.

(a) GENERAL RULE.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits allowable) is amended by adding at the end thereof the following new subpart:

“Subpart H—Environmental Remediation Credit

“Sec. 54. Amount of environmental remediation credit.

“Sec. 54A. Designation of eligible jurisdictions.

“Sec. 54B. Allocation of credit limits.

“Sec. 54C. Definitions and special rules.

SEC. 54. AMOUNT OF ENVIRONMENTAL REMEDIATION CREDIT.

“(a) GENERAL RULE.—For purposes of section 38, the environmental remediation credit determined under this section is 25 percent of the costs—

“(1) which are paid or incurred by an eligible taxpayer for environmental remediation with respect to any contaminated site, and

“(2) which are incurred by the taxpayer pursuant to an environmental remediation plan for such site which was approved by the Administrator of the Environmental Protection Agency.

“(b) REMEDIATION PLAN MUST BE COMPLETED.—

“(1) IN GENERAL.—Except as otherwise provided in paragraph (2)—

1 “(A) no environmental remediation credit
2 shall be determined under this section with re-
3 spect to any qualified contaminated site unless
4 the Administrator of the Environmental Protec-
5 tion Agency certifies the environmental remedi-
6 ation plan for such site has been completed,
7 and

8 “(B) if such Administrator certifies that
9 such plan has been completed, such credit shall
10 be taken into account under subsection (a) rat-
11 ably over the 5 taxable year period beginning
12 with the taxable year in which such plan was
13 completed.

14 “(2) SPECIAL RULE WHERE EXTRAORDINARY
15 COST INCREASES.—If—

16 “(A) the taxpayer determines that due to
17 unforeseen circumstances the cost of completing
18 the remediation plan for any qualified contami-
19 nated site exceeds 200 percent of the estimated
20 costs of completing such plan, and

21 “(B) the State or local official administer-
22 ing the remediation credit program agrees with
23 such determination,

24 the taxpayer may cease the implementation of such
25 plan and shall be entitled to an environmental reme-

1 diation credit with respect to costs incurred before
2 such cessation. Such credit shall be taken into ac-
3 count under subsection (a) ratably over the 5-tax-
4 able-year period beginning with the taxable year in
5 which such cessation occurs.

6 “(c) ELIGIBLE TAXPAYER.—For purposes of this sec-
7 tion, any taxpayer who is not liable under any authority
8 of law for environmental remediation at a contaminated
9 site is an eligible taxpayer with respect to that site.

10 “(d) CERTAIN PARTIES NOT ELIGIBLE.—A taxpayer
11 shall not be eligible for any credit determined under this
12 section with respect to any qualified contaminated site if—

13 “(1) at any time on or before the date of the
14 enactment of this subpart such taxpayer was the
15 owner or operator of any business on such site,

16 “(2) at any time before, on, or after such date
17 of enactment such taxpayer—

18 “(A) had (by contract, agreement, or oth-
19 erwise) arranged for the disposal or treatment
20 of any hazardous materials at such site or ar-
21 ranged with a transporter for transport for dis-
22 posal or treatment of any hazardous materials
23 at such site, or

24 “(B) had accepted any hazardous mate-
25 rials for transport to such site, or

1 “(3) the taxpayer is related to any taxpayer re-
2 ferred to in paragraph (1) or (2).

3 “(e) ADMINISTRATION BY STATE OR LOCAL GOVERN-
4 MENT AGENCIES PERMITTED.—Any reference in this sec-
5 tion, section 144(d), or section 150(b)(7) to the Adminis-
6 trator of the Environmental Protection Agency shall in-
7 clude a reference to the head of any State or local govern-
8 ment agency designated by the Administrator to carry out
9 the Administrator’s functions under such sections with re-
10 spect to any site.

11 **“SEC. 54A. CREDIT LIMIT.**

12 “For all periods after the enactment of this subpart,
13 there shall be an overall credit limitation of \$500,000,000
14 to be allocated on the basis of the date on which each tax-
15 payer filed a claim for a credit determined under this sub-
16 part.

17 **“SEC. 54B. DEFINITIONS AND SPECIAL RULES.**

18 “(a) CONTAMINATED SITE.—For purposes of this
19 subpart—

20 “(1) IN GENERAL.—The term ‘contaminated
21 site’ means any site if at least 1 of the following en-
22 vironmental conditions are present on such site:

23 “(A) A release or threatened release of any
24 hazardous, toxic, or dangerous substance.

1 “(B) Any storage tanks which contain any
2 hazardous, toxic, or dangerous substance.

3 “(C) Any illegal disposal of solid waste.

4 “(2) HAZARDOUS, TOXIC, OR DANGEROUS SUB-
5 STANCE.—Any substance, waste, or material shall be
6 treated as a hazardous, toxic, or dangerous sub-
7 stance if it is so treated under—

8 “(A) the Comprehensive Environmental
9 Response, Compensation, and Liability Act (42
10 U.S.C. 9601 et seq.),

11 “(B) the Resource Conservation and Re-
12 covery Act (42 U.S.C. 6901 et seq.), or

13 “(C) any State or local environmental law
14 or ordinance.

15 The following materials shall in any event be treated
16 as such a substance: petroleum or crude oil or any
17 derivative thereof, friable asbestos or any asbestos
18 containing material, polychlorinated biphenyls, or
19 urea formaldehyde foam insulation.

20 “(b) ENVIRONMENTAL REMEDIATION.—For pur-
21 poses of this subpart, the term ‘environmental remedi-
22 ation’ means—

23 “(1) removal or remediation activity in accord-
24 ance with an approved environmental plan including
25 soil and ground water remediation,

1 “(2) restoration of natural, historic or cultural
2 resources at the site, or the mitigation of unavail-
3 able losses of such resources incurred in connection
4 with the remediation or response activity,

5 “(3) health assessments or health effects stud-
6 ies,

7 “(4) environmental audits,

8 “(5) remediation of off-site contamination
9 caused by activity on the site, and

10 “(6) any other costs reasonably required by rea-
11 son of the environmental conditions of the site in-
12 cluding demolition of existing contaminated struc-
13 tures, site security, and permit fees necessary for re-
14 mediation.

15 “(c) BASIS REDUCTION.—The basis of any qualified
16 contaminated site shall be reduced by the amount of any
17 credit determined under this subpart with respect to such
18 site.

19 “(d) RELATED PERSON.—For purposes of this sub-
20 part, persons shall be treated as related to each other if
21 such persons are treated as a single employer under the
22 regulations prescribed under section 52(b) or such persons
23 bear a relationship to each other specified in section
24 267(b) or 707(b).”

1 (b) CREDIT MADE PART OF GENERAL BUSINESS
2 CREDIT.—Subsection (b) of section 38 of such Code is
3 amended by striking “plus” at the end of paragraph (7),
4 by striking the period at the end of paragraph (8) and
5 inserting “, plus”, and by adding at the end thereof the
6 following new paragraph:

7 “(9) the environmental remediation credit
8 under section 54(a).”

9 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
10 section 39 of such Code is amended by adding at the end
11 thereof the following new paragraph:

12 “(4) NO CARRYBACK OF ENVIRONMENTAL RE-
13 MEDIATION CREDIT BEFORE EFFECTIVE DATE.—No
14 portion of the unused business credit for any taxable
15 year which is attributable to the credit under section
16 54 may be carried back to a taxable year ending be-
17 fore the date of the enactment of section 54.”

18 (d) DEDUCTION FOR UNUSED CREDIT.—Subsection
19 (c) of section 196 of such Code is amended by striking
20 “and” at the end of paragraph (4), by striking the period
21 at the end of paragraph (5) and inserting “, and”, and
22 by adding at the end thereof the following new paragraph:

23 “(6) the environmental remediation credit de-
24 termined under section 54.”

1 (e) CLERICAL AMENDMENT.—The table of subparts
 2 for part IV of subchapter A of chapter 1 of such Code
 3 is amended by adding at the end thereof the following new
 4 item:

“Subpart H—Environmental remediation credit.”

5 (f) EFFECTIVE DATE.—The amendments made by
 6 this section shall take effect on the date of the enactment
 7 of this Act.

8 **SEC. 302. DEDUCTION OF ENVIRONMENTAL CLEANUP EX-**
 9 **PENSES.**

10 (a) IN GENERAL.—Part VI of subchapter B of chap-
 11 ter 1 of the Internal Revenue Code of 1986 (relating to
 12 itemized deductions for individuals and corporations) is
 13 amended by adding at the end thereof the following new
 14 section:

15 **“SEC. 197. HAZARDOUS SUBSTANCE CLEANUP EXPENDI-**
 16 **TURES.**

17 “(a) TREATMENT AS EXPENSES.—A taxpayer may
 18 treat hazardous substance cleanup expenditures paid or
 19 incurred during the taxable year as expenses which are
 20 not chargeable to capital account. The expenditures so
 21 treated shall be allowed as a deduction.

22 “(b) HAZARDOUS SUBSTANCE CLEANUP EXPENDI-
 23 TURES.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘hazardous sub-
 25 stance cleanup expenditures’ means expenditures

1 paid or incurred in connection with a trade or busi-
2 ness of the taxpayer for any of the following:

3 “(A) Costs of removal or remedial action
4 required by reason of any release or threatened
5 release of a hazardous substance.

6 “(B) Costs of any environmental audit,
7 monitoring or oversight activity, or health eval-
8 uation occurring in connection with any such
9 removal or remedial action.

10 “(C) Costs of determining the extent to
11 which the taxpayer is required to take action or
12 pay costs or other damages under the Com-
13 prehensive Environmental Response, Compensa-
14 tion, and Liability Act of 1980.

15 “(2) DEFINITIONS.—The terms ‘hazardous sub-
16 stance’, ‘release’, ‘removal’, and ‘remedial action’
17 have the respective meanings given such terms by
18 section 101 of the Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980.

20 “(c) WHEN METHOD MAY BE ADOPTED.—

21 “(1) WITHOUT CONSENT.—A taxpayer may,
22 without the consent of the Secretary, adopt the
23 method provided in this section for the taxpayer’s
24 first taxable year which begins after the date of the
25 enactment of this section and during which the tax-

1 payer paid or incurred hazardous substance cleanup
2 expenditures.

3 “(2) WITH CONSENT.—A taxpayer may, with
4 the consent of the Secretary, adopt at any time the
5 method provided in this section.

6 “(d) SCOPE.—The method adopted under this section
7 shall apply to all hazardous substance cleanup expendi-
8 tures. Such method shall apply to the taxable year for
9 which adopted and all subsequent taxable years unless the
10 Secretary consents to a different method for part or all
11 of such expenditures.”

12 (b) TABLE OF SECTIONS.—The table of sections for
13 part VI of subchapter B of chapter 1 of such Code is
14 amended by adding at the end thereof the following new
15 item:

“Sec. 197. Hazardous substance cleanup expenditures.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to expenditures paid or incurred
18 in taxable years beginning after the date of the enactment
19 of this Act.

20 **TITLE IV—LENDER LIABILITY**

21 **SEC. 401. AMENDMENTS TO COMPREHENSIVE ENVIRON-** 22 **MENTAL RESPONSE, COMPENSATION, AND LI-** 23 **ABILITY ACT OF 1980.**

24 The Comprehensive Environmental Response, Com-
25 pensation, and Liability Act of 1980 is amended—

1 (1) by striking the last sentence of paragraph
2 101(20)(A); and

3 (2) by inserting the following new paragraphs
4 101(20) (E) and (F):

5 “(E)(i) The term ‘owner or operator’ does
6 not include a person who, without participating
7 in the management of a vessel or facility, holds
8 indicia of ownership primarily to protect his or
9 her security interest in the vessel or facility.

10 “(ii) The term ‘indicia of ownership’ means
11 any legal or equitable interest in property ac-
12 quired directly or indirectly—

13 “(I) for the purpose of securing pay-
14 ment of a loan or indebtedness, a right of
15 reimbursement or subrogation under a
16 guaranty, or the performance of another
17 obligation,

18 “(II) evidencing ownership under a
19 lease financing transaction where the les-
20 sor does not initially select or ordinarily
21 control the daily operation or maintenance
22 of the property, or

23 “(III) in the course of protecting a se-
24 curity interest or right of reimbursement
25 or subrogation under a guaranty.

1 ‘Indicia of ownership’ include evidence of inter-
2 ests in mortgages, deeds of trust, liens, surety
3 bonds, guaranties, lease financing transactions
4 where the lessor does not initially select or ordi-
5 narily control the daily operation or mainte-
6 nance of the property, other forms of encum-
7 brances against property recognized under ap-
8 plicable law as vesting the holder of the security
9 interest with some indicia of title, legal or equi-
10 table title obtained at, or in lieu of, foreclosure,
11 and their equivalents. A person may, but is not
12 required to, hold title in property in order to
13 hold indicia of ownership in that property.

14 “(iii) A ‘holder of a security interest’ is a
15 person who holds indicia of ownership in prop-
16 erty primarily to protect a security interest. A
17 ‘holder of a security interest’ includes the initial
18 holder (such as a loan originator) and any sub-
19 sequent holder (such as a successor-in-interest
20 or subsequent purchaser of the security interest
21 on the secondary market); guarantor; lease fin-
22 ancier or any successor where the lessor does
23 not initially select or ordinarily control the daily
24 operation or maintenance of the property; any
25 person who holds indicia or ownership primarily

1 to protect a security interest; or a receiver or
2 other person who acts on behalf or for the bene-
3 fit of a holder of a security interest.

4 “(iv) The term ‘security interest’ means an
5 interest in property created or established for
6 the purpose of securing a loan, right of reim-
7 bursement or subrogation under a guaranty, or
8 other obligation or constituting a lease financ-
9 ing transaction. Security interests include mort-
10 gages, deeds of trust, liens, lease financing
11 transactions in which the lessor does not ini-
12 tially select or ordinarily control the daily oper-
13 ation or maintenance of the property, trust re-
14 ceipt transactions, and their equivalents. Secu-
15 rity interests may also arise from transactions
16 such as sales and leasebacks, conditional sales,
17 installment sales, certain assignments, factoring
18 agreements, accounts receivable financing ar-
19 rangements, and consignments, if the trans-
20 action creates or establishes an interest in prop-
21 erty for the purpose of securing a loan, right of
22 reimbursement or subrogation under a guaranty
23 or other obligation.

24 “(v) The term ‘participating in the man-
25 agement of property’ means actual participation

1 in the management or operational affairs of the
2 property by the holder, and does not include the
3 mere capacity to influence, or ability to influ-
4 ence, or the unexercised right to control facility
5 operations. A holder is participating in manage-
6 ment while the borrower is still in possession of
7 the property encumbered by the security inter-
8 est, only if the holder either—

9 “(I) exercises decisionmaking control
10 over the borrower’s environmental compli-
11 ance, such that the holder has undertaken
12 responsibility for the borrower’s solid waste
13 handling or disposal practices; or

14 “(II) exercises control at a level com-
15 parable to that of a manager of the bor-
16 rower’s enterprise, such that the holder
17 has assumed or manifested responsibility
18 for the overall management of the enter-
19 prise encompassing the day-to-day deci-
20 sionmaking of the enterprise with respect
21 to—

22 “(aa) environmental compliance;

23 or

24 “(bb) all, or substantially all, of
25 the operational (as opposed to finan-

1 cial or administrative) aspects of the
2 enterprise other than environmental
3 compliance. Operational aspects of the
4 enterprise include functions such as
5 that of facility or plant manager, op-
6 erations manager, chief operating offi-
7 cer, or chief executive officer. Finan-
8 cial or administrative aspects include
9 functions such as that of credit man-
10 ager, personnel manager, controller,
11 chief financial officer, or similar func-
12 tions.

13 “(vi) The term ‘primarily to protect a se-
14 curity interest’ includes indicia of ownership ac-
15 quired as a consequence of having or exercising
16 rights as a holder of a security interest where
17 the same is necessary or appropriate to protect
18 the security interest, to provide for compliance
19 with laws, to preserve the value of the property
20 or benefits therefrom, or to recover a loan, in-
21 debtedness or right of reimbursement or sub-
22 rogation under a guaranty or to redress any
23 other obligation secured by such interest or to
24 recover property subject to a finance lease. A
25 holder of a security interest who directly or in-

1 directly acquires full title or a right to title or
2 possession of such property upon default under
3 the security interest, or at, or in lieu of, fore-
4 closure, or, in the case of a finance lease, upon
5 expiration, cancellation, or termination of such
6 lease, shall continue to hold indicia of owner-
7 ship primarily to protect a security interest so
8 long as such holder is diligently proceeding to
9 sell or convey title or the right to title or to re-
10 lease such property on commercially reasonable
11 terms at the earliest possible time, while pre-
12 serving the property in the interim.

13 “(vii) The term ‘property’ means real and
14 personal property and includes facilities, stor-
15 age tanks, equipment, vessels, vehicles, and
16 other modes of transportation whether by sea,
17 land, or air.

18 “(viii)(I) The term ‘guarantor’ includes
19 guarantors and sureties of security interests,
20 securities, and other obligations, issuers of let-
21 ters of credit and other credit enhancements,
22 title insurers, and entities which directly or in-
23 directly acquire indicia of ownership in the
24 course of protecting a security interest or acting
25 as such guarantors, sureties, issuers of letters

1 of credit or other credit enhancements or title
2 insurers, and the term ‘guaranty’ includes guar-
3 anties, surety bonds, title insurance policies, let-
4 ters of credit and other credit enhancements,
5 and other agreements with a guarantor relating
6 to the obligations described in this subclause
7 (I).

8 “(II) ‘Directly or indirectly’ includes any
9 interest in property, security interest, indicia of
10 ownership title, or right to title held or acquired
11 by a fiduciary or similar entity for the benefit
12 of a holder of a security interest.

13 “(ix) The terms ‘borrower’, ‘debtor’, and
14 ‘obligor’ mean a person whose property is en-
15 cumbered by a security interest and includes a
16 lessee under a lease financing transaction.

17 “(x) Actions taken by a holder of a secu-
18 rity interest to foreclose, sell, liquidate, release
19 or otherwise divest or cause the transfer of
20 property subject to a security interest; or pre-
21 serve or protect the value of such property; or
22 otherwise to exercise rights of a holder of a se-
23 curity interest specified in subparagraph (v)
24 above; or to assist the borrower, debtor, obligor,
25 or lessee in winding down its operations or ac-

1 tivities related to such property; or to abandon
2 or release the property prior to foreclosure or
3 its equivalents; or to require or conduct re-
4 sponse action on, or relating to, the property;
5 shall not be deemed ‘participating in the man-
6 agement of property’ within the meaning of this
7 subsection (101)(20)(E). Completion of an envi-
8 ronmental inspection or evaluation consistent
9 with good commercial or customary practice by
10 or for the use of a holder of a security interest
11 is probative evidence that a holder of a security
12 interest is acting to preserve and protect the
13 property during the time the holder of a secu-
14 rity interest may have possession or control of
15 such property, except that this Act does not re-
16 quire a holder of a security interest to conduct
17 nor does it require any environmental inspec-
18 tion or evaluation to qualify for this exemption.

19 “(xi) A holder of a security interest who,
20 in taking actions referred to in subparagraph
21 (x) above respecting property, actively and di-
22 rectly causes or exacerbates a release of a haz-
23 ardous waste for which a Federal or an author-
24 ized State government determines that response
25 action is necessary, shall be liable for the cost

1 of such response action to the extent only that
2 the release is directly attributable to such hold-
3 er's activities, except that such a holder shall
4 not be liable for response action costs arising
5 from a release which commences before and
6 continues after such holder takes any action re-
7 ferred to in subparagraph (x) above.

8 “(F)(i) The term ‘fiduciary’ means any en-
9 tity which is considered a fiduciary under sec-
10 tion 3(21) of the Employee Retirement Income
11 Security Act of 1974, as amended from time to
12 time, or who is acting as trustee, executor, ad-
13 ministrator, custodian, guardian of estates, con-
14 servator, committee of estates of disabled per-
15 sons, personal representative, receiver, agent,
16 nominee or in any other fiduciary capacity for
17 the benefit of another entity.

18 “(ii) A fiduciary who acquires ownership or
19 control of property without having owned, oper-
20 ated, or participated in the management of that
21 property prior to assuming ownership or control
22 as fiduciary, other than for the benefit of a
23 holder of a security interest, shall not be an
24 ‘owner’ or ‘operator’ under this Act.

1 “(iii) Such a fiduciary who willfully, know-
2 ingly, or recklessly causes (in a direct and ac-
3 tive manner) a release of a hazardous sub-
4 stance, for which a Federal or an authorized
5 State government determines that response ac-
6 tion is necessary, shall be liable for the cost of
7 such response action to the extent only that the
8 release is directly attributable to the fiduciary’s
9 activities, except that such a fiduciary shall not
10 be liable for response action costs arising from
11 a release which commences before and contin-
12 ues after such fiduciary acquires ownership or
13 control of the property.

14 “(iv) Nothing in this subsection shall pre-
15 vent claims against the assets that constitute
16 the estate held by the fiduciary or the filing of
17 actions against the fiduciary in its representa-
18 tive capacity.

19 **SEC. 402. SCOPE OF APPLICATION.**

20 The provisions of this title shall apply to—

21 (1) all indicia of ownership acquired prior to
22 the date of enactment that are held primarily to pro-
23 tect a security interest in property; and

1 (2) each fiduciary with respect to any property
2 acquired by the fiduciary prior to the date of enact-
3 ment.

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